IN THE

# Supreme Court of the United States

OCTOBER TERM, 1960

No. 102

ANDJA KOLOVRAT, DRAGO STOJIC, DRAGICA SUNJIC, NEDA TURK, JOSIP BULGAN, JURE ZIVANOVIC, MARA TOLIC and MILAN STOJIC, and also BRANKO KARADZOLE, Consul General of Yugoslavia at San Francisco, California, *Petitioners*

v.

STATE OF OREGON, acting by and through the State Land Board, *Respondent*

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LUTVO ZEKIC, IBRO ZEKIC, HABIBA TUBKOVIC, DZEDJA POPOVAC, SEFKO MURADBASIC, DIKA MURADBASIC, MURTA BRKIC, MILKA ZEKIC, JASMINA ZEKIC and RAJKA ZEKIC, and BRANKO KARADZOLE, Consul General of Yugoslavia at San Francisco, California, *Petitioners*

v.

STATE OF OREGON, acting by and through the State Land Board, *Respondent*

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**On Writ of Certiorari to the Supreme Court of the State of Oregon**

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## REPLY BRIEF FOR PETITIONERS

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**On Writ of Certiorari to the Supreme Court of the State of Oregon**

## REPLY BRIEF FOR PETITIONERS

I.

The respondent's reliance on *Clark* v. *Allen*, 331 U.S. 503, 514-516 (1947) is predicated on its understanding and that of the Court below, shown by italics and asterisks and unequivocal language, R98, Resp. B. 18, that it was there held that in the German treaty with

which that case was concerned, the phrase "Nationals of either High Contracting Party" was modified by the phrase "within the territories of the other." Resp. B. 5-11, 13, 16-20, 25. Thus, in its opinion the Court below made it plain that in its view, R98; 349 P. 2d at 265:

> In the Clark case, it was held that the language of Article IV of the German Treaty applied only to nationals of either of the party nations who were *within* the territory of the other.

That was not, however, the decision in *Clark*, where the issue was whether an American's bequest to a German of personal property located within the United States, came within this provision of the treaty with Germany:

> Nationals of either High Contracting Party may have full power to dispose of their personal property of every kind, within the territories of the other, by testament, donation, or otherwise, and their heirs, legatees and donees, of whatsoever nationality, whether resident or non-resident, shall succeed to such personal property, and may take possession thereof, either by themselves or by others acting for them, and retain or dispose of the same at their pleasure subject to the payment of such duties or charges only as the nationals of the High Contracting Party within whose territories such property may be or belong shall be liable to pay in like cases.

Following *Fredericksen* v. *Louisiana*, 23 How. (U.S.) 445 (1860), where a treaty "practically identical" with the German treaty was involved, in *Clark* this Court construed "either High Contracting Party" to mean "one High Contracting Party" and expressly held, con-

trary to the respondent's view, and that of the Court below, that the phrase "within the territories of the other" modified "their personal property of every kind." 331 U.S. at 515. For *these* reasons this Court concluded that the treaty was inapplicable since the case was not one where a national of *one* country had bequeathed property located "within the territories of the *other*." That neither the applicability of the German treaty, nor the decision in *Clark* hinges on the whereabouts of the decedent or the beneficiary, is evident. It is equally evident that the language of Article II of the Convention, Pet. B. 1a, in no way resembles that of the German treaty. *Clark* affords the respondent no support.

Nor does the German treaty supply any analogy. For, the right of a legatee to inherit under the German treaty is without regard, as the treaty itself expressly provides, to his nationality or place of residence, but depends, as *Clark* makes clear, upon the decedent being a citizen of one country and the legacy being property within the other. On the other hand, as the respondent concedes, Resp. B. 19, Article II of the Convention "covers both *disposition and acquisition*" of property in one country by citizens of the other, wholly without reference to the nationality or residence of the donee in the case of disposition, or the nationality or residence of the donor in the case of acquisition. Pet. B. 1a. Thus, it is immaterial here, although it was decisive in *Clark*, that the donor as well as the property was American. For this is a case of acquisition, and the petitioners' right to inherit under Article II of the Convention derives from the location of the property in the United States and their Yugoslav citizenship, wholly unaffected by the

nationality or residence of the donor. Whether the right granted by Article II of the Convention to citizens of one country to acquire property located in the other is, however, limited to such citizens of the one as are within the other, is a question on the resolution of which neither *Clark* nor the German treaty has any bearing.

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The question here is not, as respondent seems to suggest whether Article II of the Convention "covers succession by Yugoslavian nationals to property of American citizens dying and leaving property in the United States," Resp. B. 2, for the holding of the Court below was not, as respondent summarizes it, that Article II "did not cover nationals residing in their home countries with respect to testate or intestate succession of *their* properties by nationals in the other country * * *." Resp. B. 4. On the contrary, the decision of the Court below was based squarely on the residence of the petitioners in Yugoslavia and nothing further, other than its misunderstanding of *Clark*. Thus, in rejecting the petitioners' construction of Article II, the Court below said, R100; 349 P. 2d at 266:

> If we correctly appraise the position of defendants, they would, notwithstanding the doctrine of *Clark* v. *Allen*, supra, have us interpret the words "in Serbia" and "in the United States", as they appear in Article II * * *, as referring to the place where property rights are granted rather than to the geographical location of the person claiming them. If thus construed, the provision would accord to the nationals of either party wherever resident rights similar to those enjoyed by nationals of the most favored nation wherever resident. But this we decline to do, being impressed that the construction given to the German Treaty in the Clark case applies with equal force to the Serbian Treaty of 1881 * * *.

This controversy stems from petitioners' claim, as citizens of Yugoslavia, of the right under Article II of the Convention "to acquire * * * property * * * by inheritance" in the United States, and the holding of the Court below was that Article II reserves such right only to citizens of Yugoslavia who are within the United States. The question here is, accordingly, as petitioners and the *amicus* have stated it. Pet. B. 2; Am. B. 2. The ease with which the respondent has confused the holding of the Court below with what was held in *Clark* serves to emphasize how far the Court below misread both *Clark* and the treaty provision with which it was concerned. The respondent, however, completes the circle when it asserts that the meaning it would attribute to Article II is that, Resp. B. 19:

> It covers * * * *acquisition* of property by * * * a citizen of Yugoslavia who may be in the United States, but it does not apply to * * * [those] within their own territory.

2.

The respondent has now made it plain that its construction of Article II of the Convention is that, Resp. B. 19:

> It covers both *disposition and acquisition* of property by a citizen of the United States who may be in Yugoslavia or a citizen of Yugoslavia who may be in the United States, but it does not apply to nationals of either country within their own territory. [Emphasis as in the original]

But, the respondent does not dispute that the consequences of so construing Article II, i.e., as granting only to such citizens of one country as may be within the other, the right to acquire (and to dispose of)

property located in the other, would be utterly incompatible with the Convention's express purpose of "facilitating and developing the commercial relations" between the two countries. Pet. B. 20-30. Nor does the respondent undertake to say why a construction of Article II, which would clearly frustrate the achievement of the Convention's very purpose, should be adopted despite the salutary principle that requires the rejection of a construction that is "inconsistent with the general purpose and object" of a treaty, or that would make it "null and inefficient." *Sullivan* v. *Kidd*, 254 U.S. 433, 440 (1921); *DeGeofroy* v. *Riggs*, 133 U.S. 258, 270 (1890).

Respondent relies on the use of the disputed phrase in the context of certain portions of Articles I and IV of the Convention as supporting its construction. Resp. B. 20-22. But, the consequences of applying respondent's construction to such portions of Articles I and IV, would be wholly inconsistent with the Convention's purpose. For, as respondent would construe Article I, its mutual assurances of national or most-favored-nation treatment in matters of taxation, customs, "and all other matters connected with trade," and relative to "all the rights, privileges, exemptions and immunities of any kind * * * with respect to commerce," would extend only to citizens of the United States "who may be in Yugoslavia," and to citizens of Yugoslavia "who may be in the United States."

Accordingly, under respondent's construction, the Convention would not bar either country from grossly discriminating in these respects against citizens of the other who remain at home but engage in trade or commerce with it. Since international trade and commerce are largely, if not almost exclusively conducted by

merchants, corporate and other, who remain in their own countries. Pet. B. 23, 24, respondent's construction of the disputed phrase, as applied to Article I, would render the Convention completely ineffectual as a means of "facilitating and developing * * * commercial relations," which is its express purpose. Moreover, since at the time the Convention was negotiated and concluded, there were "few or no Americans residing in Serbia," Pet. B. 38, 39, it is hardly likely that the United States would have thought it worthwhile to enter into a commercial convention with Serbia which protected American merchants from discrimination in matters affecting commerce and trade, only if they were in Serbia.

Similarly, as applied to the portion of Article IV cited, Resp. B. 22, respondent's construction of the disputed phrase would exclude merchants of one country remaining at home but engaging in trade and commerce with the other, from the exemptions it provides from "billetting; * * * all forced loans, and from all military exactions or requisitions," and their warehouses, goods and credits in the other country would be completely without protection against such practices. The same considerations as weigh against respondent's construction of Article I are equally applicable here. Furthermore, the then recent achievement by Serbia of her independence, and the unsettled conditions prevailing there and generally in the Balkans when the Convention was concluded,[1] would seem to militate strongly against attributing to the United States any purpose to exclude the property in Serbia of any American from the exemptions provided by Article IV.

[1] See, e.g., Hazen, *Europe Since 1815* (1923) 564-577.

Neither *In re Arbulich's Estate*, 41 Cal. 2d 86, 257 P. 2d 433, nor *Lukich v. Department of Labor and Industries*, 176 Wash. 221, 29 P. 2d 388, on which respondent relies, Resp. B. 18, 24, is any authority for its construction of Article II. Thus, in *Arbulich*, while the Court "noted" that the disputed phrase "*seemingly*" limited the grant of rights in Article II to citizens of one country who were within the other, it held that even if Article II gave a Yugoslav not within the United States rights of inheritance with respect to American property, 257 P. 2d at 437:

> the rights granted are only those given * * * "to the subjects of the most favoured nation" and do not purport to equal the rights given or guaranteed by each of the contracting nations to *its own* citizens. Consequently the treaty provisions do not establish the reciprocal rights required by the Probate Code.

In *Lukich* the Convention's most-favored-nation clause was held not to extend to Yugoslavs rights under workmen's compensation laws granted by treaty to citizens of other countries, since the Convention was not to be construed as including such rights within its purview. 29 P. 2d at 390. Clearly, it was whether such rights were "along the same lines [as those] covered" by the Convention, and not the meaning of the phrase here in dispute, that was the question of construction referred to in the passage respondent quotes. Resp. B. 24. For, the opinion immediately continues: "It follows then that nationals of Yugoslavia are entitled to the benefit of the * * * 'most favored nation' clause of the convention * * * subject to the rules governing the construction of treaties". No authority is cited, and there is none to support any thesis that the most

favored nation clause of itself imports a geographical limitation, and what was said in this regard must be taken in the context of the case, which pertained to the death in the United States of a Yugoslav workman. See, e.g., V Hackworth, *Dig. Int. L.*, 269-296.

3.

There is, of course, no question but that it is for the Courts to determine the construction to be given a treaty, and the petitioners do not contend otherwise as the respondent would imply. Resp. B. 25-28. But in its day-to-day conduct of foreign affairs and protection of American rights abroad, the Executive must necessarily, and does construe international agreements to which the United States is a party.[2] While, concededly, such constructions are not *binding* on the Courts, they are not to be disregarded, as the respondent seems to contend. On the contrary, this Court has held that in construing a treaty, courts must "be care-

[2] The truncated 1910 statement of Secretary Knox quoted by the respondent, Resp. B. 26, does not reflect any policy of the State Department, then or at any other time, against construing treaties. The Department has on innumerable occasions undertaken to construe treaties, in exchanges of notes and otherwise. See, e.g., *United States* v. *Pink*, 315 U.S. 203, 224 n. 7 (1942); *Factor* v. *Laubenheimer*, 290 U.S. 276, 295 (1933); *Sullivan* v. *Kidd*, 254 U.S. 433, 438 (1921); *Chaitlon* v. *Kelly*, 229 U.S. 447, 466-472, 475 (1913); *Castro* v. *DeUsparte*, 16 Fed. 93, 98 (S.D.N.Y. 1883). The part of Secretary Knox' statement which the respondent fails to quote shows that his reason for not concurring in Mexico's construction of the treaty there concerned was that "it is not entirely clear to the department that the contention which you make regarding the meaning of Article VIII * * * is the only one which may properly be placed upon it * * *." V Hackworth, *Dig. Int. L.* (1943) 399. Secretary Knox did not hesitate to construe a treaty when he was confident of its meaning. See *Charlton* v. *Kelly*, *loc. cit. supra*.

ful to see that international engagements are faithfully kept and observed" and to that end, "the construction placed upon the treaty * * * and consistently adhered to by the Executive Department of the government, charged with the supervision of our foreign relations, should be given much weight." *Sullivan* v. *Kidd*, 254 U.S. 433, 442 (1921); *Charlton* v. *Kelly*, 229 U.S. 447, 468 (1913); *Factor* v. *Laubenheimer*, 290 U.S. 276, 295 (1933). Moreover, in the circumstances of this case, Pet. B. 29-33, the Executive construction here would appear to be entitled to even greater weight. Thus, in *United States* v. *Reid*, 73 F. 2d 153, 156 (9th Cir., 1934), cert. denied 299 U.S. 544, the Court said:

> This historical attitude of the state department should be of great, if not controlling, weight in construing our treaty * * *.
>
> * * * *
>
> This rule would apply with even more cogency where the state department * * * negotiating with the other treaty-making power concerning the meaning and effect of a treaty, * * * insists upon a not unreasonable construction of its terms which is acquiesced in by the other power.

Somewhat similarly, the applicable principle is stated as follows in the American Law Institute's *Restatement of the Foreign Relations Law of the United States* (Tentative Draft No. 3, 1959), § 136:

> In exercising the authority * * * to interpret international agreements * * * courts in the United States give great weight to the interpretations of the President. In applying this rule the courts take into account:
>
> (a) The fact that a judicial interpretation contrary to an executive interpretation previously communicated to another party to the international agreement may result in difficulties

> for the United States in the conduct of its foreign relations and possibly subject the United States to liability under international law for breach of the international agreement * * *.

4.

It may be, as respondent appears to argue, that the commitments and arrangements of and under the International Monetary Fund Agreement are conceived as being temporary in character. Resp. B. 30-32. However, so long as they continue to be in effect, and so long as the United States continues to be a party to them, it must be irrelevant to the considerations here involved that the Fund and its members are constantly striving towards the permanent elimination of all foreign exchange controls, and are looking forward to the day when there will no longer be any need for them. The measures currently being taken to stem the flight of the dollar show clearly that even the United States cannot afford to leave unchecked those forces which in the circumstances of other countries must be met by exchange controls.

It is irrelevant, too, that the United States has not exercised its right under the Agreement to impose controls on capital transfers. Resp. B. 30. Oregon may not, of course, exercise the prerogative of the United States in this regard, any more than it can regulate foreign commerce where the policy of the United States is to leave it unregulated. *Chy Lung* v. *Freeman*, 92 U.S. 275 (1876); *Henderson* v. *Wickham*, 92 U.S. 259 (1876). The question here however, is not that, but whether Oregon may penalize citizens and residents of a member of the Fund that does exercise its right under the Agreement to control capital transfers, by denying them for that reason alone, rights that they would otherwise enjoy under its laws.

The resolution of this question does not depend, as respondent seems to think, on whether the foreign exchange controls involved are required, or are merely permitted under the Agreement, or whether Oregon's action amounts to an engagement in foreign affairs. Resp. B. 32. It depends, rather, on whether Oregon's admittedly domestic policy of discriminating in matters of inheritance against non-resident aliens who are citizens and residents of countries maintaining foreign exchange controls consistent with the Agreement, is "an obstacle to the accomplishment and execution of the full purpose and objectives of the Congress" in authorizing adherence to the Agreement and membership in the Fund. Pet. B. 46, 47. That Oregon's policy is such an obstacle is clear, for to penalize severely citizens of members of the Fund that exercise rights or privileges permitted to them under the Agreement and by the Fund, is to impose onerous conditions on the exercise of such rights and privileges. To contend that Oregon can do so, is to say that any of the fifty states can take counter measures within the ambit of its domestic policy, against citizens of any country which exercises a right or privilege reserved to it in an agreement with the United States, but which the state regards with disfavor. Cf. *Bacardi Corp.* v. *Domenech*, 311 U.S. 150 (1940).

The decrees of the Court below should be reversed.

Respectfully submitted,

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# SUPREME COURT OF THE UNITED STATES

No. 102.—October Term, 1960.

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| Andja Kolovrat, et al., Petitioners, v. Oregon. | On Writ of Certiorari to the Supreme Court of Oregon. |

[May 1, 1961.]

Mr. Justice Black delivered the opinion of the Court.

Joe Stoich and Muharem Zekich died in Oregon in December 1953 without having made wills to dispose of personal property they owned in that State. Their only heirs and next of kin, who but for being aliens could have inherited this Oregon property under Oregon law, were brothers, sisters, nieces and nephews who were all residents and nationals of Yugoslavia. But § 111.070 of the Oregon Revised Statutes rather severely limits the rights of aliens not living in the United States to "take" either real or personal property or its proceeds in Oregon "by succession or testamentary disposition."[1] And subsec-

[1] "(1) The right of an alien not residing within the United States or its territories to take either real or personal property or the proceeds thereof in this state by succession or testamentary disposition, upon the same terms and conditions as inhabitants and citizens of the United States, is dependent in each case:

"(a) Upon the existence of a reciprocal right upon the part of citizens of the United States to take real and personal property and the proceeds thereof upon the same terms and conditions as inhabitants and citizens of the country of which such alien is an inhabitant or citizen;

"(b) Upon the rights of citizens of the United States to receive by payment to them within the United States or its territories money originating from the estates of persons dying within such foreign country; and

"(c) Upon proof that such foreign heirs, distributees, devisees or legatees may receive the benefit, use or control of money or property

tion (3) of the same Oregon statute provides that where there are no next of kin except ineligible aliens and the deceased made no will, the property of the deceased shall be taken by the State as escheated property.

The State filed petitions under this provision in an Oregon Circuit Court to take for itself the personal property of both decedents,[2] alleging that there were no next of kin eligible to take under Ore. Rev. Stat. § 111.070. The answers filed by the Yugoslavian relatives and the San Francisco Counsul General of that country (who are petitioners here) alleged that "in fact and in law reciprocal rights of inheritance as prescribed by O. R. S. 111.070 did exist" between the United States and Yugoslavia when the decedents died and that the Yugoslavian relatives therefore were eligible to take under Oregon law. After hearings in which evidence was taken, the trial court found that the reciprocal right of inheritance required by § 111.070 (a) did exist and that, both at the time the two deceased died and at the time of the trial, there existed "rights of citizens of the United States to receive payment to them within the United States . . . of moneys originating from the estates of persons dying within the country of Yugoslavia" as required by § 111.070 (b). The State Supreme Court reversed, holding that petitioners had failed to prove "the ultimate fact" that there existed "as a *matter of law an unqualified and enforceable right to receive* as defined by ORS 111.070."[3] It found

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from estates of persons dying in this state without confiscation, in whole or in part, by the governments of such foreign countries.

"(2) The burden is upon such nonresident alien to establish the fact of existence of the reciprocal rights set forth in subsection (1) of this section."

[2] The Circuit Court consolidated the two cases and they have been treated as one since.

[3] 349 P. 2d 255, 262.

instead that such an unqualified right did not exist because the laws of Yugoslavia give discretion to Yugoslavian authorities to control foreign exchange payments in a way that might prevent Americans from receiving the full value of Yugoslavian inheritances. It was accordingly held that Oregon state law standing alone barred these Yugoslavian nationals from inheriting their relatives' personal property in Oregon.

The state court went on to say that this holding disposes of petitioners' claims "[u]nless the area of alien succession over which the state of Oregon seeks to control through ORS 111.070, supra, has been preempted by some treaty agreement subsisting between Yugoslavia and the United States" at the time of the decedents' death. On this point the court said:

> "We are mindful that rights of succession to property under local law may be affected by an overriding federal policy when a treaty makes different or conflicting arrangements. In such event, the state policy must give way. Clark v. Allen, 331 U. S. 503, 517 . . . ."

Thus, recognizing quite properly that state policies as to the rights of aliens to inherit must give way under our Constitution's Supremacy Clause to "overriding" federal treaties and conflicting arrangements, the state court considered petitioners' contention, supported in this Court by the Government as *amicus curiae*, that petitioners were entitled to inherit this personal property because of an 1881 Treaty between the United States and Serbia, which country is now a part of Yugoslavia. The state court rejected this contention on the basis of its interpretation of the Treaty although it correctly recognized that the Treaty is still in effect between the United States and

Yugoslavia.[4] The state court also rejected petitioners' contention that their claims could not be defeated solely because of the possible effect of the Yugoslavian Foreign Exchange Laws and Regulations since those laws and regulations admittedly meet the requirements of the Bretton Woods Agreement of 1944,[5] to which both Yugoslavia and the United States are signatories. We granted certiorari because the cases involve important rights asserted in reliance upon federal treaty obligations. 364 U. S. 812.

For reasons to be stated, we hold that the 1881 Treaty does entitle petitioners to inherit personal property located in Oregon on the same basis as American next of kin and that these rights have not been taken away or impaired by the monetary policies of Yugoslavia exercised in accordance with later agreements between that country and the United States.

## I.

The parts of the 1881 Treaty most relevant to our problem are set out below.[6] The very restrictive meaning

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[4] The Treaty is reported at 22 Stat. 963. Official recognition that it is still in effect can be found in the Settlement of Pecuniary Claims Against Yugoslavia Agreement between the United States and Yugoslavia of July 19, 1948, 62 Stat. 2658, T. I. A. S. 1803, Art. 5.

[5] 60 Stat. 1401, T. I. A. S. 1501.

[6] "The United States of America and His Highness the Prince of Serbia, animated by the desire of facilitating and developing the commercial relations established between the two countries, have determined with this object to conclude a treaty . . . .

ARTICLE I.

"There shall be reciprocally full and entire liberty of commerce and navigation between the citizens and subjects of the two high contracting powers, who shall be at liberty to establish themselves freely in each other's territory. . . . [*Note 6 continued on p. 5.*]

given the Treaty by the Oregon Supreme Court is based chiefly on its interpretation of this language:

> "In all that concerns the right of acquiring, possessing or disposing of every kind of property . . . citizens of the United States in Serbia and Serbian subjects in the United States, shall enjoy the rights which the respective laws grant . . . in each of these states to the subjects of the most favored nation."

This, the State Supreme Court held, means that the Treaty confers a right upon a United States citizen to acquire or inherit property in Serbia only if he is "in Serbia" and upon a Yugoslavian citizen to acquire property in the United States only if he is "in the United States." The state court's conclusion, therefore, was that the Yugoslavian complainants, not being residents of the United States, had no right under the Treaty to inherit from their relatives who died leaving property in Oregon. This is one plausible meaning of the quoted language, but

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ARTICLE II.

"In all that concerns the right of acquiring, possessing or disposing of every kind of property, real or personal, citizens of the United States in Serbia and Serbian subjects in the United States, shall enjoy the rights which the respective laws grant or shall grant in each of these states to the subjects of the most favored nation.

"Within these limits, and under the same conditions as the subjects of the most favored nation, they shall be at liberty to acquire and dispose of such property, whether by purchase, sale, donation, exchange, marriage contract, testament, inheritance, or in any other manner whatever, without being subject to any taxes, imposts or charges whatever, other or higher than those which are or shall be levied on natives or on the subjects of the most favored state.

"They shall likewise be at liberty to export freely the proceeds of the sale of their property, and their goods in general, without being subjected to pay any other or higher duties than those payable under similar circumstances by natives or by the subjects of the most favored state."

it could just as plausibly mean that "in Serbia" all citizens of the United States shall enjoy inheritance rights and "in the United States" all Serbian subjects shall enjoy inheritance rights, and this interpretation would not restrict almost to the vanishing point the American and Yugoslavian nationals who would be benefited by the clause. We cannot accept the state court's more restrictive interpretation when we view the Treaty in the light of its entire language and history. This Court has many times set its face against treaty interpretations that unduly restrict rights a treaty is adopted to protect.[7]

The 1881 Treaty clearly declares its basic purpose to bring about "reciprocally full and entire liberty of commerce and navigation" between the two signatory nations so that their citizens "shall be at liberty to establish themselves freely in each other's territory." Their citizens are also to be free to receive, hold and dispose of property by trading, donation, marriage, inheritance or any other manner "under the same conditions as the subjects of the most favored nation." Thus, both paragraphs of Art. II of the Treaty which have pertinence here contain a "most favored nation" clause with regard to "acquiring, possessing or disposing of every kind of property." This clause means that each signatory grants to the other the broadest rights and privileges which it accords to any other nation in other treaties it has made or will make. In this connection we are pointed to a treaty of this country made with Argentina before the 1881 Treaty with Yugoslavia.[8]

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[7] See, *e. g.*, *Bacardi Corp.* v. *Domenech*, 311 U. S. 150, 163; *Jordan* v. *Tashiro*, 278 U. S. 123, 128–129.

[8] Treaty of Friendship, Commerce, and Navigation, Between the United States and the Argentine Confederation of 1853, 10 Stat. 1005, 1009, I Malloy 20. Article IX of this Treaty provides: "In whatever relates to . . . acquiring and disposing of property of every sort and denomination, either by sale, donation, exchange, testament,

and treaties of Yugoslavia with Poland and Czechoslovakia," all of which unambiguously provide for the broadest kind of reciprocal rights of inheritance for nationals of the signatories which would precisely protect the right of these Yugoslavian claimants to inherit property of their American relatives.

The rights conferred by the 1881 Treaty, broadly stated as they are, would fall far short of what individuals would hope or desire for their complete fulfillment if one who by work and frugality had accumulated property as his own could be denied the gratification of leaving his property to those he loved the most, simply because his loved ones were living in another country where he and they were born. Moreover, if these rights of "acquiring, possessing or disposing of every kind of property" were not to be afforded to merchants and businessmen conducting their trade from their own homeland, the Treaty's effectiveness in achieving its express purpose of "facilitating . . . commercial relations" would obviously be severely limited.[10] It is not in such a niggardly fashion that treaties designed to promote the freest kind of traffic, communications and associations among nations and their nationals should be interpreted, unless such an interpretation is required by the most compelling necessity. There is certainly no such compulsion in the 1881 Treaty's language or history.

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or in any other manner whatsoever, . . . the citizens of the two contracting parties shall reciprocally enjoy the same privileges, liberties, and rights, as native citizens . . . ."

[9] Yugoslav-Polish Treaty, 30 League of Nations Treaty Series 185; Yugoslav-Czechoslovakian Treaty, 85 Leage of Nations Treaty Series 455.

[10] Besides the obvious relevance of Art. II of the Treaty even when considered alone, Art. III specifically contemplates the interchange of "merchants, manufacturers and trades people" or "their clerks and agents."

While courts interpret treaties for themselves, the meaning given them by the departments of government particularly charged with their negotiation and enforcement are given great weight.[11] We have before us statements, in the form of diplomatic notes exchanged between the responsible agencies of the United States and of Yugoslavia, to the effect that the 1881 Treaty, now and always, has been construed as providing for inheritance by both countries' nationals without regard to the location of the property to be passed or the domiciles of the nationals. And relevant diplomatic correspondence and instructions issued by our State Department show that the 1881 Treaty was one of a series of commercial agreements which were negotiated and concluded on the basis of the most expansive principles of reciprocity. The Government's purpose in entering into that series of treaties was in general to put the citizens of the United States and citizens of other treaty countries on a par with regard to trading, commerce and property rights.[12]

The Oregon Supreme Court apparently thought itself bound to decide this question of treaty construction against petitioners because of our decision in *Clark* v. *Allen*, 331 U. S. 503. We do not agree. In that case we held that a 1923 Treaty with Germany did not confer rights upon German nationals residing in Germany to inherit from American citizens. The German Treaty did contain some language which, when considered in isolation, could be thought to be sufficiently similar to the controlling provisions of the 1881 Treaty to suggest that these parts of the two treaties should be interpreted to

[11] See, *e. g.*, *Factor* v. *Laubenheimer*, 290 U. S. 276, 294–295.

[12] See, *e. g.*, Report on Negotiations dated Nov. 30, 1850, printed as Senate Confidential Document No. 1, 31st Cong., 2d Sess., 5 Miller, Treaties and Other International Acts of the United States 861; D. S., 15 Instructions, Argentina, 19–26, 6 Miller, *supra*, 219.

have the same meaning.[13] But the differences between the two treaties are crucial. The German Treaty covered only disposal of property; the 1881 Treaty very broadly covers acquisition of property as well as disposal. The treaty before us, as we have pointed out, contains the highly significant "most favored nation" clause, long used to broaden the scope of rights protected by treaties; the German Treaty had no "most favored nation" clause. Moreover, the language of other treaties which was almost identical with the pertinent provision in the German Treaty had previously been given a very limited construction by this Court, a construction from which we were unwilling to depart in *Clark* v. *Allen*. Finally, the relevant history of the negotiations for, the interpretation of and the practices under the 1881 Treaty support petitioners' claims, but no such supporting history was brought to our attention with respect to the German Treaty.

We hold that under the 1881 Treaty, with its "most favored nation" clause, these Yugoslavian claimants have the same right to inherit their relatives' personal property as they would if they were American citizens living in Oregon; but, because of the grounds given for the Oregon Supreme Court's holding, we shall briefly consider whether this treaty right has in any way been abrogated or impaired by the monetary foreign exchange laws of Yugoslavia.

## II.

Oregon law, its Supreme Court held, forbids inheritance of Oregon property by an alien living in a foreign country unless there clearly exists "as a matter of law an

[13] The language relied upon by the Oregon Supreme Court was: "Nationals of either High Contracting Party may have full power to dispose of their personal property of every kind within the territories of the other . . . ."

unqualified and enforceable right" for an American to receive payment in the United States of the proceeds of an inheritance of property in that foreign country. The state court held that the Yugoslavian foreign exchange laws in effect in 1953 left so much discretion in Yugoslavian authorities that it was possible for them to issue exchange regulations which might impair payment of legacies or inheritances abroad and for this reason Americans did not have the kind of "unqualified and enforceable right" to receive Yugoslavian inheritance funds in the United States which would justify permitting Yugoslavians such as petitioners to receive inheritances of Oregon property under Oregon law. Petitioners and the United States urge that no such doubt or uncertainty is created by the Yugoslavian law, but contend that even so this Oregon state policy must give way to supervening United States-Yugoslavian arrangements. We agree with petitioners' latter contention.

The International Monetary Fund (Bretton Woods) Agreement of 1944, *supra*, to which Yugoslavia and the United States are signatories, comprehensively obligates participating countries to maintain only such monetary controls as are consistent with the terms of that Agreement. The Agreement's broad purpose, as shown by Art. IV, § 4, is "to promote exchange stability, to maintain orderly exchange arrangements with other members, and to avoid competitive exchange alterations." Article VI, § 3, forbids any participating country from exercising controls over international capital movements "in a manner which will restrict payments for current transactions or which will unduly delay transfers of funds in settlement of commitments . . . ." Article 8 of the Yugoslavian laws regulating payment transactions with other countries expressly recognizes the authority of "the provisions of agreements with foreign countries which are

concerned with payments."[14] In addition to all of this, an Agreement of 1948 between our country and Yugoslavia[15] obligated Yugoslavia, in the words of the Senate Report on the Agreement, "to continue to grant most-favored-nation treatment to Americans in ownership and acquisition of assets in Yugoslavia . . . [and] Yugoslavia is required, by Article 10, to authorize persons in Yugoslavia to pay debts to United States nationals, firms, or agencies, and, so far as feasible, to permit dollar transfers for such purpose."[16]

These treaties and agreements show that this Nation has adopted programs deemed desirable in bringing about, so far as can be done, stability and uniformity in the difficult field of world monetary controls and exchange. These arrangements have not purported to achieve a sufficiently rigid valuation of moneys to guarantee that foreign exchange payments will at all times, at all places and under all circumstances be based on a "definitely ascertainable" valuation measured by the diverse currencies of the world. Doubtless these agreements may fall short of that goal. But our National Government's powers have been exercised so far as deemed desirable and feasible toward that end, and the power to make policy with regard to such matters is a national one from the compulsion of both necessity and our Constitution. After the proper governmental agencies have selected the policy of foreign exchange for the country as a whole, Oregon of course cannot refuse to give foreign nationals their treaty rights because of fear that valid international agreements might possibly not work completely to the satisfaction of state authorities. Our National Government's assent

[14] Law To Regulate Payments to and from Foreign Countries, Foreign Exchange Law, Official Gazette of the Federal People's Republic of Yugoslavia, Oct. 25, 1946, Belgrade, No. 86, Year II.

[15] See note 4, *supra*.

[16] S. Rep. No. 800, 81st Cong., 1st Sess., p. 4.

to these international agreements, coupled with its continuing adherence to the 1881 Treaty, precludes any State from deciding that Yugoslavian laws meeting the standards of those agreements can be the basis for defeating rights conferred by the 1881 Treaty.

The judgment of the Supreme Court of Oregon is reversed and the cause remanded for proceedings not inconsistent with this opinion.

*Reversed and remanded.*